



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1996

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria
Legal Department
P.O. Box 1758
Victoria, Texas 77902-1758

OR96-1807

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101427.

The Victoria Police Department (the "department") received a request for "a copy of your reports, plus photos of the product involved in [the] accidental death of Henry M. Cavazos." You inform us that the department has released to the requestor portions of the requested information. You assert that portions of the requested information are excepted from disclosure based on section 552.101 of the Government Code.

Section 552.101 excepts from required public disclosure information that is confidential by law. You assert that Health and Safety Code section 773.091(a) applies to a communication between Mr. Cavazos and a paramedic, Mr. Raul Liendo, which appears in a supplementary offense report dated May 14, 1996. Section 773.091(a) reads as follows:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

We have reviewed the information and conclude that section 773.091(a) applies to the information we have marked, which includes not only a patient communication to Mr. Liendo, but also a patient communication to an emergency room nurse. We have reviewed the exceptions to confidentiality in Health and Safety Code section 773.092. One of those exceptions provides that a confidential communication may be disclosed to "governmental agencies if the disclosure is required or authorized by law." See Health and Safety Code

§ 773.092(e)(2). We are unaware of any law that authorizes the release of the confidential information to the requestor, a representative of a federal agency. We do not believe any of the other exceptions to confidentiality apply. We conclude that the department must not release the patient communications to the requestor. Gov't Code § 552.101.

You assert that portions of a supplementary offense report dated May 17, 1996 are excepted from disclosure under section 552.101 in conjunction with Family Code section 34.08. The Seventy fourth Legislature repealed Family Code section 34.08 and added Family Code section 261.201(a).¹ Section 262.201(a) states as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

It does not appear that this provision applies to the information at issue. However, we do believe the report contains information protected from public disclosure by common-law privacy. We have marked the information that the department must withhold from the requestor based on section 552.101 of the Government Code in conjunction with the common-law right to privacy. See *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977)

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

¹See Act of April 6, 1995, 74th Leg., R.S., ch. 20, sec. 1, 1995 Tex. Sess. Law Serv. 113, 264.

KHG/rho

Ref.: ID# 101427

Enclosures: Marked documents

cc: Ms. Jerusha J. Walker
Investigator
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(w/o enclosures)